NO. 80-6844

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

BUDDY EARL JUSTUS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF GEORGIA

BRIEF ON BEHALF OF THE RESPONDENT

HARRISON KOHLER
Assistant Attorney General
Counsel of Record

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

JOHN C. WALDEN
Senior Assistant
Attorney General

Please serve:

HARRISON KOHLER
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3359

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QUESTION PRESENTED

Where an accused makes a knowing and voluntary plea to the offense of an execution style murder committed during the course of an armed robbery, kidnapping, and rape of the victim and where there is a factual basis for the plea, is the death penalty constitutional?

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STATEMENT OF THE CASE

Petitioner Buddy Earl Justus, who is under death sentence in Florida, Georgia, and Virginia for three different murders, was arrested in Virginia and eventually returned to Georgia.

Following Petitioner's indictment, he informed the district attorney that he wished to plead guilty to all charges. In response the district attorney went to the Petitioner's jail cell and advised the Petitioner of his right to a trial by jury and his right to either a retained or appointed attorney. The district attorney further advised Petitioner at this time that the State would seek the death penalty, and that the death penalty would probably be imposed.

A hearing was held May 23, 1980, in the Superior Court of Gwinnett County, Georgia. Petitioner tried to plead guilty at that time but the judge refused to accept the plea.

Instead the trial judge appointed an attorney who had been practicing law for approximately fifteen years and had handled over seventeen capital cases to represent Petitioner. The judge informed Petitioner of all of his constitutional rights, and told Petitioner that if the circumstances of the case otherwise warranted it, the judge had no conscientious, moral or religious objections to a sentence of death. Petitioner answered that he understood this and that he understood the rights explained to him. Also, the trial judge made the following findings of fact: Petitioner was twenty-eight years old and had attended school through the tenth grade; he had been tried in a court of law three times prior to the present proceedings (he had one retained and two appointed attorneys); and, he understood the nature of the present proceeding. Finally, the trial judge set down June 13, 1980, as plea day.

During the interim prior to plea day, the district attorney turned over to Petitioner's appointed attorney, in addition to district attorney's entire file, the list of State's witnesses , the statement which Petitioner had made to the Gwinnett County Police, a copy of Petitioner's FBI rap sheet, a mental evaluation of Petitioner, and the State Crime Lab Report.

On June 13, 1980, a hearing was held, and Petitioner admitted kidnapping, robbing, raping and killing the victim. Both Petitioner and his attorney were extensively questioned by the trial judge. It was unequivocal that Petitioner understood his constitutional rights and the consequences of entering a guilty plea.

The Court accepted the plea and held an additional hearing June 21, 1980. Two psychiatric reports of Petitioner were tendered. Also eight State witnesses testified. Medical examiner Donald Dave testified that the victim had first been stabbed three times, then shot in the back of the head. Although the stab wounds were exceedingly painful and would have eventually caused the victim's death, the gunshot wound was the actual cause of death. Officer W. V. Morgan found Petitioner's fingerprints at the murder scene, and Sheila Miller saw Petitioner and the victim together just prior to the murder. The psychiatric reports established that Petitioner was not psychotic, incompetent, or insane. He was in contact with reality and knew right from wrong.

From the evidence in this case, the trial court was authorized to find that Petitioner and Dean Goins, a co-defendant, came to Georgia from Florida and decided to steal a van and rob someone. They pulled into a shopping center and sat there drinking beer until Rosemary S. Jackson, who was driving the type of van they desired, parked her van in the shopping center parking lot.

They abducted the victim at gunpoint and took her to Crack Road, a dirt access-road. Petitioner drove the victim's van with the victim inside, and Goins drove the car that they had driven up from Florida.

On the way to the execution site Petitioner stopped at a truck stop and made the victim purchase a C.B. unit, and pay for it with a credit card. The two proceeded to Crack Road where the Petitioner raped, stabbed and shot Mrs. Jackson. The co-defendant, Goins was present at the scene but did not participate in the rape or murder. The New York tag was removed

from the car and placed on the van. The car was then left near the body, and Petitioner and his co-defendant left in the van, ultimately being arrested in Virginia.

On June 24, 1980, the trial court found that the murder was committed during the capital felonies of armed robbery, kidnapping with bodily injury, and rape; also the Court found that the murder was outrageously and wantonly vile, horrible, and inhuman in that it involved torture, depravity of mind, and an aggravated battery to the victim. The death penalty was imposed.

The conviction and sentence were upheld on the automatic review by the Georgia Supreme Court. Justus v. State, 247 Ga. 276, 276 S.E.2d 242 (1981).

REASON FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT A WRIT OF CERTIORARI BECAUSE THAT IS THE MOST EXPEDITIOUS WAY OF RESOLVING PETITIONER'S CLAIM THAT A DEATH PENALTY CANNOT BE IMPOSED UPON A KNOWING AND VOLUNTARY PLEA OF GUILTY.

Georgia Courts have consistently held that a death penalty may be imposed upon the entry of a knowing and voluntary guilty plea to murder. Fair v. State, 245 Ga. 868, 268 S.E.2d 316 (1980), cert. denied ___ U.S. ___ (1980); Mitchell v. State, 234 Ga. 160, 214 S.E.2d 900 (1975), cert. denied 428 U.S. 910 (1976); Moore v. State, 233 Ga. 861, 213 S.E.2d 829 (1975), cert. denied 428 U.S. 910 (1976).

To hold otherwise would in effect punish an accused in a capital case for exercising his constitutional right to a trial by jury. Cf. Blackledge v. North Carolina, 417 U.S. 21 (1974); North Carolina v. Pearce, 395 U.S. 711 (1969).

The record in Petitioner's case is fully developed. If this Court denies a writ of certiorari, this Court will be faced with another petition for writ of certiorari when State habeas relief is denied, see Ga. Code Ann. § 50-127, and a third petition upon the denial of federal habeas relief. See 28 U.S.C. § 2254.

The only issue in this case is whether the death penalty can be imposed upon a knowing and voluntary guilty plea to the crime of murder. The most expeditious way to resolve Petitioner's claim is by the granting of a writ of certiorari.

See generally Coleman v. Balkcom, ___ U.S. ___, 68 L.Ed.2d 334 (1981) (J. Rehnquist dissenting).

Respectfully submitted,

HARRISON KOHLER
Assistant Attorney General
Counsel of Record

ARTHUR K. BOLTON
Attorney General

ROBERT S. STUBBS, II
Executive Assistant
Attorney General

DON A. LANGHAM
First Assistant
Attorney General

JOHN C. WALDEN
Senior Assistant
Attorney General

BRYANT HUFF
District Attorney
Gwinnett Judicial Circuit

Please serve:

HARRISON KOHLER
132 State Judicial Bldg.
40 Capitol Square, S.W.
Atlanta, Georgia 30334
(404) 656-3359